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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 231

[Docket Number: 230915-0220]

RIN 0693-AB70

Preventing the Improper Use of CHIPS Act Funding

AGENCY: CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce.

ACTION: Final rule.

SUMMARY: The CHIPS and Science Act of 2022, which amended Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (collectively, the CHIPS Act or Act) established an incentives program to reestablish and sustain U.S. leadership across the semiconductor supply chain. The Department of Commerce, through the National Institute of Standards and Technology, is issuing this final rule to implement conditions in the Act that seek to prevent funding provided through the program from being used to directly or indirectly benefit foreign countries of concern. The rule defines terms related to these conditions, describes the types of activities that are prohibited by those conditions, and sets forth procedures for notifying the Secretary of Commerce (Secretary) of non-compliance and the process by which the Secretary will enforce these provisions.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Sam Marullo at (202) 482-3844 or askchips@chips.gov. Please direct media inquiries to the CHIPS Press Team at press@chips.gov.

SUPPLEMENTARY INFORMATION:

On March 23, 2023, the National Institute of Standards and Technology published and requested public comment on a proposed rule that defined terms used in the Act (including terms that will be used in required agreements with covered entities), identified the types of transactions that are prohibited under the Expansion Clawback and Technology Clawback sections of the Act, and provided a description of the proposed process for notification of certain transactions to the Secretary (88 FR 17439). This final rule includes final definitions of terms, describes the types of conditions that will apply to expansion, joint research, and technology licensing activities, establishes a process for notifying the Secretary of potentially impermissible activities, and articulates processes by which the Secretary will enforce these provisions.

Background

The CHIPS Act, 15 U.S.C. 4651 *et seq,* established a semiconductor incentives program (CHIPS Incentives Program) to provide funding via grants, cooperative agreements, loans, loan guarantees, and other transactions, to incentivize investments in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment. The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the Department.

To protect national security and the resiliency of supply chains, CHIPS funds may not be provided to a foreign entity of concern, such as an entity that is owned by, controlled by, or subject to the jurisdiction or direction of a country listed in 10 U.S.C. 4872(d). In addition, the Act establishes guardrails, including the Expansion Clawback (15 U.S.C. 4652(a)(6)) and the Technology Clawback (15 U.S.C. 4652(a)(5)(C)), to prevent the beneficiaries of CHIPS funds from supporting the semiconductor manufacturing and technology development of foreign

countries of concern. To effectuate these conditions, and to prevent their circumvention, covered entities are required to enter into a binding agreement with the Department.

This final rule codifies the Expansion Clawback in Subpart B, including exceptions to the prohibition on semiconductor manufacturing capacity expansions that apply to existing facilities that manufacture legacy semiconductors and for significant transactions involving semiconductor manufacturing capacity expansion for new facilities producing legacy semiconductors that predominately serve the market of a foreign country of concern.

This final rule requires covered entities to fulfill certain obligations ahead of taking certain actions. A covered entity must notify the Secretary of any planned significant transaction by the covered entity or a member of its affiliated group involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, including in cases where it believes the transaction may be allowed under the exceptions. Terms related to this notification requirement are defined in Subpart A of this final rule, and procedures for submission and review of these notifications are detailed in Subpart C. Failure by a covered entity or member of its affiliated group to comply with the conditions of the Expansion Clawback may result in recovery of the full amount of Federal financial assistance provided to the covered entity.

This final rule also defines terms used in and further explains the Act's Technology Clawback, which prohibits the covered entity from knowingly engaging in any joint research or technology licensing effort with a foreign entity of concern that relates to a technology or product that raises national security concerns as determined by the Secretary and communicated to the covered entity before the covered entity engages in such joint research or technology licensing. A covered entity's required agreement will include a commitment that the covered entity will not conduct such prohibited joint research or technology licensing. The Technology Clawback does not apply to joint research or technology licensing that is ongoing prior to the Secretary communicating to the covered entity the technologies or products that raise national security concerns, which is being done through this final rule. To effectuate this safe harbor, the

required agreement will memorialize any ongoing joint research or technology licensing with foreign entities of concern that relates to technology or products that raise national security concerns. Failure to comply with this condition may also result in recovery of up to the full amount of Federal financial assistance. This final rule serves as the Secretary's communication to covered entities of the categories of technologies and products that raise national security concerns. The Secretary retains discretion to not provide an award to an applicant if the applicant's ongoing joint research or technology licensing activities are inconsistent with the goals of the Act. Subpart C articulates the process by which the Secretary will evaluate any possible violations of the Technology Clawback and provide notice to the covered entity.

In addition, to address the risk of circumvention of the Technology Clawback, while accommodating commenters' request for flexibility, CPO is clarifying in the final rule that it will impose additional conditions, as appropriate, in the funding agreement that are in addition to the Technology Clawback. The final rule provides that the Secretary may take appropriate remedial measures, including requiring mitigation agreements or recovering up to the full amount of the Federal financial assistance provided to a covered entity, if any entity that is a related entity of the covered entity engages in joint research or technology licensing that would violate the Technology Clawback if engaged in by the covered entity. The Secretary has discretion to impose lesser remedial measures, as appropriate. For purposes of this final rule, a related entity is any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the covered entity. This approach is necessary to prevent enterprises from circumventing the conditions that Congress required to avoid semiconductor technology transfer to foreign entities of concern.

Discussion of Comments

CPO received 27 comment submissions in response to the proposed rule. Comments were received from industry and trade associations, multinational semiconductor companies and companies in related industries, individuals, a law firm, a union, a foreign government, and one

anonymous commenter. Three submissions included business proprietary information, along with a public summary. Commenters generally expressed support for the goals and objectives of the CHIPS Act, including the national security guardrails provisions that are the subject of this final rule. Many comments raised specific concerns about the potential negative business effects of certain definitions set forth in the proposed rule and provided detailed suggestions for alternatives. Other submissions were more general in nature and did not provide specific comments on the proposed rule itself. All submissions were carefully reviewed, and CPO thanks the public for its engagement. CPO's responses to comments within the scope of this rulemaking have been grouped by the regulatory section to which they pertain and are summarized below.

A. Comments related to Subpart A – Definitions

231.101 Affiliate.

Comment #1: Several commenters noted that the definition of "affiliate" in the proposed rule differed from the definition of "affiliated group" included in the statute at 15 U.S.C. 4652(a)(6)(C)(iii). This resulted in an inconsistency between the threshold percentage to be used for identifying affiliates based on voting interest under the proposed rule (50 percent) and the threshold under the Act for identifying members of the affiliate group (80 percent).

Response: CPO is removing the defined term "affiliate" from the final rule to avoid confusion. CPO addresses the operation of the Expansion Clawback and the Technology Clawback in light of this change in each of those sections below.

231.102 Applicable term.

Three submissions included comments on the definition of "applicable term." The commenters argued that the statute specifies different applicable terms for the Expansion Clawback (a period of ten years following the date of the award) and the Technology Clawback (for the applicable term of the award), whereas the proposed rule harmonized the term of both clawbacks at ten years from the date of the award. Commenters questioned whether CPO had the authority to set this term for the purposes of the Technology Clawback. They suggested that this

discrepancy be remedied by differentiating that there are two applicable terms, one for the Expansion Clawback and one for the Technology Clawback.

Response: In the proposed rule, CPO sought to align the applicable terms of the Expansion Clawback and Technology Clawback at ten years for consistency and ease of monitoring and compliance. However, CPO recognizes that there may be instances where the term of an award is shorter than the ten years articulated in the Expansion Clawback, and there may be instances where the term of the award exceeds the ten-year time period in the Expansion Clawback. As the term of the award will depend upon the particular award, CPO is removing the definition of applicable term from the rule and will instead articulate the applicable term of a particular award in the relevant award documents.

231.103 Existing facility.

Comment #1: Several comments were received regarding the meaning of "existing facility," specifically regarding the phrase "operating at the semiconductor manufacturing capacity level for which it was designed," and the phrase "semiconductor manufacturing capacity at the time the required agreement is signed." The comments noted that these phrases can capture two different measurements of "manufacturing capacity," as most facilities do not always run at their full designed capacity. Specifically, due to market conditions, ramping up activities, and other factors, there could be a significant gap between the planned or designed capacity of a facility and its actual output at the time a funding agreement is signed. Production also fluctuates from one quarter to another based on market conditions and product demand. Other comments noted that facilities may be awaiting the installation of one or more pieces of new or replacement equipment which should be considered part of the semiconductor manufacturing capacity level for which the facility was designed. Commenters suggested revising the definition of "existing facility" to account for the full design capacity at the time the facility was planned.

Response: CPO agrees that additional clarity is warranted. The final rule clarifies that

certain facilities that are undergoing construction, expansion, or modernization may be considered existing facilities under specified conditions, and that the baseline manufacturing capacity of the existing facilities at the date of the award will be addressed in the covered entity's required agreement.

231.106 Foreign entity of concern.

Comment #1: Some commenters expressed concern that it would be difficult for them to determine whether a foreign entity falls into one of the categories considered "foreign entities of concern." They prefer limiting the definition to specific lists of foreign entities of concern that they can readily check. Another commenter thought that using existing government lists is reasonable but will be gamed, because "China can easily create small, not genuinely independent R&D entities that are challenging to track." Further, the commenter notes, the "draft regulations effectively require the [U.S. government] to devote more resources than at present, to maintain these lists properly as new PRC entities appear."

Response: The criteria for "foreign entities of concern" were articulated in the Act. CPO recognizes that, for some of the criteria, in particular the criteria related to foreign entities that have been alleged by the Attorney General to have been involved in certain activities for which a conviction was obtained, there may not be a consolidated, readily available list. And there are other criteria that require the evaluation of standards to determine whether a particular entity is a foreign entity of concern. Nevertheless, CPO expects that covered entities can exercise appropriate diligence to determine whether a potential joint research or technology licensing partner would fall within the categories articulated in the Act and this rule.

Comment #2: Several commenters consider the proposed definition of "foreign entities of concern" too broad and noted that it would include many Chinese citizens and companies. They suggested excluding from this definition any foreign entity that is an affiliate or employee of a funding recipient or limiting it to entities included on certain U.S. Government lists, such as the Bureau of Industry and Security's Entity List.

Response: CPO declines to make this change. The Act articulates the criteria for a foreign entity of concern, and, as noted above, CPO expects that covered entities can exercise appropriate diligence to identify entities that fall within the criteria articulated in Act. CPO also notes that preventing all activities, including joint research and technology licensing, with related corporate entities operating in foreign countries of concern, would conflict with the current business practices of the semiconductor industry in a manner that is inconsistent with the goals of the Act to develop a viable supply of secure and trusted semiconductors for the United States. Rather than amending the definition of "foreign entity of concern," the final rule includes exceptions in the definitions of "joint research" and "technology licensing" that exempt employees of the covered entity and related entities from the scope of the Technology Clawback.

231.108 Joint research.

Numerous comments were received regarding the definition of "joint research." In general, commenters noted that there were several types of activities that could be captured by the proposed definition, the restriction of which would disrupt normal business activities without a significant benefit to national security.

Comment #1: Commenters noted that some entities that would meet the definition of "foreign entities of concern" are members of international standards development organizations. Commenters noted that failing to include an exception in the joint research prohibition for international collaborative efforts in standards organizations would weaken opportunities for U.S. leadership in the global semiconductor sector, which requires that U.S. entities have a seat at the table for standard setting discussions.

Response: CPO agrees with the comments about international standards organizations, and the final rule includes an exception from the Technology Clawback for joint research related to standards.

Comment #2: Multiple comments noted the need to clarify that intra-company research and development activities should not be considered joint research.

Response: The final rule excludes from the definition of joint research any research and development conducted exclusively between employees of a covered entity or between entities that are related entities of the covered entity.

Comment #3: Commenters requested an exemption for any joint research and development related to warranty, service, and customer support performed by a covered entity.

Response: CPO agrees this type of activity does not pose a risk to national security, and the final rule now excludes from the definition of joint research warranty, service, and customer support performed by the covered entity or by any entity that is a related entity of the covered entity.

Comment #4: Some comments noted that it is common business practice in the global semiconductor industry for companies to outsource fabrication and/or packaging, which requires them to share design files and other technology related to specific products.

Response: CPO understands that outsourced manufacturing, including packaging, is widely used and has therefore added an exception in the definition of joint research for research, development, or engineering involving drawings, designs, or related specifications for products to be purchased and sold between two or more persons.

Comment #5: Some commenters requested an exemption for joint research, development, and engineering related to manufacturing processes for existing products.

Response: The intent behind this rule is to prohibit investments that could threaten national security while not unduly disrupting existing supply chains. Some manufacturing processes for existing products are sensitive and would raise national security concerns if transferred to a foreign entity of concern. However, prohibiting other work would be disruptive to existing supply chains and would not reduce national security risks. Outsourced assembly, test, and packaging providers (OSATs) within foreign countries of concern are commonly used within the industry today, cannot easily be substituted, and present limited national security risk because they operate on already fabricated semiconductors. Therefore, CPO has narrowed the

requested exemption to work necessary solely to enable use of assembly, test, or packaging services for integrated circuits.

Comment #6: Some commenters requested that the rule allow for collaborations between semiconductor equipment manufacturers and other upstream suppliers. Commenters argue that chemicals and materials necessary for manufacturing must be tested and evaluated for use on specific manufacturing equipment.

Response: Noting that the Technology Clawback only applies to technologies or products that raise national security concerns and involve foreign entities of concern, CPO finds that the collaborations mentioned by these commenters may result in advancing the military capability of foreign countries of concern, including the ability to produce advanced semiconductors that are a force multiplier for military modernization. Therefore, CPO declines to allow for an exception for such collaborations.

Comment #7: Some commenters requested that there be an exception for joint research involving fundamental research and publicly available or published information.

Response: CPO believes that these types of activities between covered entities and foreign entities of concern pose risks through the potential transfer of technology that raises national security concerns. While the underlying technology or information is publicly available, additional advancements in the technology or its use may be made through joint research and development to the benefit of the foreign entity of concern.

Comment # 8: One commenter noted that, based on the definitions of "joint research" and "technology licensing," the Technology Clawback prohibition would extend to items that are not subject to the jurisdiction of the Export Administration Regulations. They suggest limiting the technology subject to the joint research and technology licensing prohibition to that technology "subject to the EAR," as defined in 15 C.F.R. § 734.3."

Response: The Technology Clawback is intended to be broader in reach than the Export Administration Regulations. The Act creates a financial assistance program the goal of which is

to incentivize investment in facilities and equipment in the United States to provide a secure supply of semiconductors for national security and critical infrastructure, and to support the technology leadership of the United States. The goals of the Act are more expansive than just mitigating national security threats posed by the export of technology. Further, recipients of CHIPS funds may have operations outside the United States, which would not necessarily be subject to the restrictions of the Export Administration Regulations. It would be inconsistent with the goals of the Act for recipients of CHIPS funds to engage in joint research or technology licensing that was not in the national security interests of the United States, even if that activity was not prohibited by the Export Administration Regulations.

Comment #9: One commenter representing multiple semiconductor companies indicated that it is common practice to "design-in" devices into the customers' end products. They note that "[t]hese discussions can involve technical matters; exchange of data including product features, product reliability, and product limitations; and consideration of alternative semiconductor products to optimize the end system's performance and cost." They believe these standard commercial exchanges could erroneously be captured under the definition of joint research, and request that there be an exception for "[d]isclosures of a process or assembly design kit, complex design intellectual property, foundational design intellectual property, or other technical information provided by a funding recipient or its affiliates to its customer solely for the design of integrated circuits to be manufactured by the funding recipient."

Response: CPO declines to allow for this exception to the definition of joint research. The prohibition is limited to semiconductor technologies and products that raise national security concerns and to interactions with foreign entities of concern. CPO believes this activity may result in advancing the military capability of foreign countries of concern, including the ability to produce advanced military products incorporating semiconductors. However, CPO is including an exception under Technology Licensing to allow for discloses of technical information to a customer solely for the design of integrated circuits to be manufactured by the funding recipient

for that customer.

231.110 Legacy semiconductor.

Comment #1: Several commenters noted that the proposed definition of legacy semiconductor excluded all semiconductors packaged utilizing 3D integration. Commenters also stated that some types of 3D packaging, such as stacking two legacy dies on top of each other using wire bonds, flip-chip, and bump connections are decades old and should be considered legacy. They note that "these techniques do not create the high bandwidth or functional density needed for advanced computing, AI, or communication applications."

Response: CPO agrees. The final rule clarifies that only semiconductors utilizing advanced 3D integration packaging such as by directly attaching one or more die or wafer, through silicon vias (TSV), or through mold vias (TMV) are not considered to be legacy semiconductors.

Comment #2: Two commenters suggested that the definition's reference to 28-nanometer generation or older should be modified by deleting the reference to gate length and substituting a phrase regarding technologies using the planar transistor architecture that should be considered as the same 28nm generation technology. They asserted the statute and the proposed rule define legacy semiconductor to include "28-nanometer generation or older" technologies without further elaboration on the many derivative technologies of the same technology generation. Therefore, "legacy semiconductor" should cover all planar transistors of the same technology generation to be consistent with the essential policy objectives of the export control rules that became effective on October 7, 2022.

Response: CPO declines to make this change. The proposed rule adequately captured the meaning of the term "28-nanometer generation," which is consistent with the language of the Act. CPO acknowledges that, for more recent generations of semiconductors, gate length can become disconnected from node size. However, the result of this disconnection is that gate length is longer than node size for some highly advanced nodes. By setting the gate length

threshold at 28nm, CPO will accurately capture legacy semiconductors. In addition, allowing improvements to the base 28nm generation architecture to be considered as legacy semiconductors could undermine the policy purpose of the prohibition. For example, a company could use (or create) a derivation of their existing 28nm technology for use in a foreign country of concern, thereby enabling precisely the kind of material expansion of semiconductor manufacturing capacity the Act seeks to constrain.

Comment # 3: Commenters suggested that the definition of "legacy semiconductor" be expanded to include more advanced memory technology.

Response: CPO declines to make the suggested change and retains the existing definition in the final rule. The Act requires that the threshold for memory technology be set relative to the 28nm generation for logic chips. CPO finds the inclusion of more advanced memory technology would be counter to this directive. Moreover, the parameters for legacy memory in the final rule are consistent with current export control levels for memory chips. CPO further notes that the Act requires the Secretary to reassess technology levels on a regular basis, and at least every two years.

231.111 Material expansion.

Comment #1: Multiple commenters noted that semiconductor fabrication facilities must regularly make equipment and efficiency upgrades and productivity improvements within existing cleanroom space to maintain competitiveness, and these should not be considered "material expansions" (even though they may increase capacity incrementally). They asserted that the definition of "material expansion" in the proposed rule would cause these ordinary efficiency and productivity improvements to existing production lines to violate the Expansion Clawback. They recommend deletion of references to "equipment" and adopting a more focused, clearer definition for "material expansion" as the "building new cleanroom space that does not exist on the date of the Federal financial assistance award which has the purpose or effect of increasing semiconductor manufacturing capacity of a facility by more than five percent." They

note that cleanroom space is a more accurate measure of "material expansion" because the size of cleanroom space is tailored to a certain range of planned production capacity.

Response: CPO agrees with these comments to the extent they reference improvements to technology and equipment instead of semiconductor manufacturing capacity. In the final rule, CPO has modified the definition of material expansion to refer to the addition of cleanroom or other physical space. Cleanroom space is indicative of a facility's production capacity, and in contrast to wafer starts per month or a similar metric, does not ordinarily fluctuate over time or change with ordinary course of business equipment upgrades. Therefore, addition of cleanroom space as a metric better captures the concept of material expansion and is substantially easier to monitor, helping to prevent evasion of the restriction.

Comment #2: Some commenters requested that the threshold for material expansion should be adjusted upwards to allow for continued necessary technological upgrades to existing facilities. They believe that the five percent threshold for material expansion will have the practical effect of capping a facility's current capacity for 10 years. They suggest expanding thresholds to account for expected fluctuations in output and preexisting plans.

Response: CPO declines to adjust the material expansion threshold. The Act requires that covered entities agree not to engage in any material expansions of semiconductor production capacity in foreign countries of concern. Raising the five percent threshold for allowable material expansions would undermine this objective. The existing five percent disregard is sufficient to allow for ordinary course-of-business upgrades to facilities and production lines.

231.112 Owned by, controlled by, or subject to the jurisdiction or direction of.

Several commenters expressed concern that this definition could be interpreted to mean that a covered entity would be prohibited from sharing technology with all Chinese citizens in all parts of the world**.** They noted that because the term "foreign entity of concern" is used in the prohibition on certain joint research or technology licensing, even very routine and necessary business activity could be blocked.

Additionally, one commenter argued that the 25 percent voting interest threshold inadequately addresses the methods of influence–beyond mere voting–that are employed by and available to foreign countries of concern against entities in the semiconductor industry.

Finally, one commenter noted that the proposed regulations seek to include all Chinese citizens and companies "subject to the jurisdiction" of the government of China to fall within the scope of a "foreign entity of concern."

Response: In the final rule, CPO has modified the definition to provide greater specificity and has incorporated a definition of "owned by, controlled by, or subject to the jurisdiction, or direction of" into the definition of "foreign entity of concern" to clarify that the scope of the terms are limited to defining foreign entities of concern. As a consequence, the separate definition of "owned by, controlled by, or subject to the jurisdiction, or direction of" has been removed from the final rule. To address the concern of some commenters regarding the broad scope of the definition, CPO clarified that it is limited to countries that are listed in 10 U.S.C. 4872(d), and applies to citizens, nationals or residents of those countries while they are in any of the countries listed in 10 U.S.C. 4872(d). For example, the term would include an Iranian national working in Russia, but would not include a Chinese national lawfully working in the United States or the Republic of Korea.

To address the concern that foreign entities of concern could circumvent the restrictions of the rule by establishing entities for which multiple foreign entities of concern each have ownership below the 25 percent threshold, the rule clarifies that, where at least 25 percent of the person's outstanding voting interest is held directly or indirectly by any combination of persons who would otherwise be foreign entities of concern themselves, that person is also a foreign entity of concern.

CPO also made modifications to the definitions of joint research and technology licensing to allow for those activities to continue among employees of the covered entity and among related entities, even if the definition of foreign entity of concern would be implicated.

231.113 Person.

Comment: One submission suggested that the definition of "person" should only include owners or those who have control over or receive profits from semiconductor manufacturing in foreign countries of concern. They asserted that this flexibility should also apply to service agreements and suppliers to those agreements that have no ownership or control over the prohibited activity.

Response: This final rule retains the definition of person that was established in the Act. CPO believes this definition best aligns with the national security goals of the Act.

231.114 Predominately serves the market.

Comment #1: Several commenters disagreed with the proposed definition of "predominately serves the market" as meaning that at least 85 percent of the output by value must be used or consumed in the market of the foreign country of concern. Commenters argued that "predominately" implies a 50 percent threshold or at most a 70 percent threshold, and provided examples in which federal departments and agencies had interpreted "predominately" to mean 50 percent or more. On the other hand, another commenter expressed support for the 85 percent threshold: "85 percent of output serving the host market is a somewhat arbitrary level but the idea is sound. On top of risks from China making advanced chips, a flood of low-end chip exports will eventually emerge, similar to steel, phones, and so on. This may be unavoidable but the US should not speed the outcome."

Response: CPO is maintaining the 85 percent threshold in its consideration of whether certain production of legacy semiconductors "predominately serves the market" in a foreign country of concern. This percentage appropriately disincentivizes certain production of legacy semiconductors in foreign countries of concern by a covered entity unless that entity's output will predominately serve those countries' domestic markets. A lower threshold could result in U.S. financing indirectly supporting additional production of legacy semiconductors in foreign countries of concern, including in ways that would potentially destabilize global semiconductor

markets. This could undermine the ability of the United States to develop commercially viable semiconductor industries, thereby forcing the U.S. military and critical infrastructure businesses to rely on semiconductors produced by foreign countries of concern. This is a key national security risk that the CHIPS Act was intended to address.

The Act does not define "predominantly" (or "predominantly serves the market"). While there may be some instances where the term "predominate" has been interpreted to mean 50 percent, that does not mean it can only be interpreted to mean 50 percent. Indeed, in section 102 of the Dodd-Frank Act, Pub. L. 111-203, Congress defined the term "predominantly engaged" to align with an 85 percent or more threshold. And while other agencies have construed "predominantly" to mean 50 percent or more, that was in different contexts, and does not dictate that "predominantly" can only mean a bare majority. There is no indication that Congress used predominate here to imply a bare majority, and based upon CPO's understanding of the semiconductor industry and the goals of the Act, CPO believes that an 85 percent threshold is appropriate for determining when a semiconductor manufacturing facility predominantly serves the market of a foreign country of concern.

Comment #2: Commenters noted that semiconductor manufacturers often lack full visibility into the ultimate end users of their products. They noted that semiconductor companies "do not sell products directly to consumers but to companies such as original equipment manufacturers (OEMs) and other device integrators and are often sold and re-sold through a long chain of distributors. This makes it difficult, if not impossible, to follow each product to its ultimate user." They requested that the regulations should adjust the tracking requirements for semiconductor manufacturers to reflect their practical limitations in determining the end-use of their products and limit tracking to documents obtained in the ordinary course of business, such as "ordered by" "sold to" or "shipped to" information.

One commenter suggested an alternative method to calculate the 85 percent threshold. They suggested using a simpler metric based on the ratio of units an entity manufactures in a

foreign country of concern to the units shipped into a foreign country of concern. They asserted that this ratio illustrates the extent to which a manufacturer is reliant on production in foreign countries of concern to supply customers elsewhere; manufacturers that ship an equal or greater number of units into foreign countries of concern than the number of units they produce in foreign countries of concern are not reliant on supply manufactured in foreign countries of concern.

Another commenter requested that there be a safe harbor for the calculation of "predominately serves the market" so that companies that believe, in good faith, they meet the threshold would not be subject to the Expansion Clawback.

Response: CPO declines to interpret "serves the market" to refer to the location to which the semiconductors are first shipped or to create a safe harbor. Doing so would undermine the Act's goals of ensuring that CHIPS Act-funded innovation does not fuel expansion of the semiconductor industries in foreign countries of concern. Semiconductors are often purchased by an initial customer and then integrated into technology that is sold in other products. Focusing solely on the initial sale would not address circumstances where that initial customer is then selling goods with those semiconductors in different markets. Because the goal of this prong of the exception to the Expansion Clawback is to allow the continued expansion of semiconductor manufacturing capacity by facilities in foreign countries of concern that produce products for use in foreign counties of concern, it is imperative that focus be on the country where the semiconductor is ultimately used, not just the location of the middleman purchasing the semiconductors in the first instance.

CPO recognizes that this definition may require covered entities to implement new mechanisms to track where their products are ultimately incorporated and sold in final products. CPO believes that companies can develop those capabilities to meet the final rule's requirements.

231.115 Required agreement.

Comment: Several commenters noted the need for flexibility in the required agreement to

address unique circumstances such as the sale or transfer of a facility from one party to another, or for how to deal with facilities that are planned, under construction or otherwise not operating at the capacity for which they are designed at the time of the agreement.

Response: CPO agrees that additional flexibility in the required agreement would support the policy goals of the CHIPS Program. The final rule amends the proposed definition of "required agreement" to allow for the Secretary and covered entity to amend the required agreement by mutual consent, consistent with law. In addition, the revised definition clarifies that the required agreement will memorialize the covered entity's existing facilities (including capacity) in foreign countries of concern, as well as any ongoing joint research or technology licensing with a foreign entity of concern that relates to a technology or product that raises national security concerns. In addition, the required agreement will address any additional restrictions that are necessary to prevent circumvention of the Technology Clawback.

231.118 Semiconductor manufacturing.

Comment #1: Commenters suggested defining semiconductor manufacturing to include the earlier stages of the manufacturing process such as creating polysilicon ingots and making wafers. They note that polysilicon and related materials are the semiconductor in semiconductor chips and a very necessary part of a complete and resilient U.S. semiconductor supply chain and that "the proposed rule, however narrowly focused on enforcement, appears to broadly affect eligibility for the CHIPS §48D credit." Other commentors suggested clarifying that upstream suppliers are not considered to be semiconductor manufacturers (and therefore are not subject to the prohibition on expansions of semiconductor manufacturing capacity).

Response: CPO agrees that additional clarity would be appropriate. The final rule clarifies that semiconductor wafer production is included within the definition of semiconductor manufacturing, along with semiconductor device fabrication and packaging, and is therefore subject to the Expansion Clawback. Semiconductor wafer production includes the processes of wafer slicing, polishing, cleaning, epitaxial deposition, and metrology. Suppliers further

upstream, such as those supplying polysilicon and other raw materials, are not included within the scope of semiconductor manufacturing for the purposes of this rule and are therefore also not subject to the Expansion Clawback.

231.119 Semiconductor manufacturing capacity.

Comment #1: Multiple commenters suggested that for fabrication facilities that produce wafers designed for a wafer-to-wafer bonding structure, productive capacity should be measured in wafers stacked in order to align the metric with the facility's actual output, and to account for the fact that the number of stacked wafers produced at these facilities is far smaller than the number of wafers started because wafers are stacked and combined during production.

Response: CPO agrees with this suggestion and in the final rule notes that for semiconductor fabrication facilities for wafers designed for wafer-to-wafer bonding structure, semiconductor manufacturing capacity is measured in stacked wafers per year. The semiconductor manufacturing capacity of such facilities will be documented in the covered entity's required agreement.

Comment #2: Commenters suggested measuring semiconductor manufacturing capacity on an annual basis, rather than wafer starts per month to smooth the measurement of capacity and avoid undue focus on a single month where capacity may be higher or lower.

Response: CPO agrees with this suggestion and has modified the definition in the final rule to measure semiconductor manufacturing capacity in wafers per year.

231.120 Semiconductors critical to national security.

Comment #1: Multiple commenters argued that the list of semiconductors critical to national security in the proposed rule is overly broad and includes some products that are widely used in commercial applications (such as silicon carbide semiconductors and FD-SOI semiconductors). They noted that exports of some of these products are not controlled for national security or regional stability reasons under the Export Administration Regulations. They recommended that the list be fully harmonized with current export controls and not include

general purpose commodities not designed for a particular application. They also asserted that such alignment with existing restrictions would "reduce administrative and compliance burdens and … achieve the objectives of regulatory harmonization as stated in the proposal's preamble." One commenter also suggested that the compound and wide-bandgap/ultra-wide bandgap semiconductor categories on the list should be "narrowed to exclude products that reduce carbon emissions because they enhance rather than threaten U.S. national security" (specifically, SiC power semiconductors).

Response: CPO acknowledges that there are commercial applications in which compound and fully depleted silicon on insulator (FD-SOI) semiconductors are increasingly used. However, the performance advantages offered by compound semiconductors over silicon semiconductors, such as wider bandgap, lower operating voltages, and higher electron mobility are vital to many sophisticated military applications.

Moreover, the governments of some foreign countries of concern have identified compound semiconductors as a strategic emerging industry. They have set ambitious goals for acquisition and development of compound semiconductor technology and strive to become global leaders in the industry. CPO notes that while exports of certain semiconductors are not subject to national security or regional stability export controls, joint research or technology licensing involving these products with foreign entities of concern can nevertheless pose a significant risk to national security. Recipients of CHIPS Act funds should not further that risk. Therefore, CPO declines to remove compound and wide and ultra-wide bandgap semiconductors from the list of semiconductors critical to national security.

Regarding FD-SOI semiconductors, based on public comments, CPO has removed from the list of semiconductors critical to national security those FD-SOI semiconductors that relate to semiconductor packaging operations with respect to semiconductors of a 28-nanometer generation or older. This is consistent with the definition of legacy semiconductors.

Comment #2: One comment was received regarding inclusion of radiation hardened semiconductors on the list of semiconductors critical to national security. The commenter thought that additional clarification was needed, because in some cases "the integrated circuits produced from the standard commercial process technology have become naturally more radiation resistant" and "radiation hardening can also occur during design." The commenter suggests that Commerce work with industry to clarify the coverage for radiation hardened semiconductors.

Response: As the commenter also noted, "Radiation-hardened by process" has "traditionally meant that special steps were taken in the process technology to enhance the radiation resilience of the products, such as introducing different substrate materials." CPO clarifies that semiconductors that are specially designed or processed to be resistant to radiation are considered semiconductors critical to national security.

231.121 Significant transaction.

Comments: One commenter requested that there be flexibility in the definition of "significant transaction," which it believes will "better comport with the actual language of the statute which requires a determination of the appropriate restriction on a case-by-case basis." The commenter suggested including a statement that the Department will have flexibility on a case-by-case basis to deviate from the definition of "significant transaction" to accommodate the unique needs and investments of a funding recipient and its affiliates." Other commenters argued the $100,000 threshold (in aggregate over the applicable term of the required agreement) for significant transactions was too low, given the high capital costs associated with semiconductor manufacturing.

Response: After further evaluation, CPO is removing the proposed definition from the final rule. The Act contemplates that what constitutes a significant transaction will be defined in the required agreement. CPO acknowledges that different thresholds for significant transactions

may be appropriate for different applicants. CPO anticipates issuing further guidance on this issue.

231.122 Significant renovations.

Comment #1: Commenters noted that the term "significant renovations" was not included in the CHIPS Act. Specifically, they object to inclusion of the phrase "a facility that undergoes significant renovations after the required agreement is entered into shall no longer qualify as an 'existing facility.'" Commenters noted that this phrase, when combined with the proposed rule's definition of "significant renovations" as "any set of changes to a facility that, in the aggregate during the applicable term of the required agreement, increase semiconductor manufacturing capacity . . . by adding an additional line or otherwise increase semiconductor manufacturing capacity by 10 percent or more," limits the ability to expand capacity for legacy semiconductor manufacturing to ten percent above existing capacity. The comments assert that the proposed rule would substantially narrow the exemption for existing legacy facilities and would limit the ability of companies to protect and maintain past investments in these existing facilities.

Response: CPO declines to remove the concept of significant renovations from the final rule. The concept of significant renovations clarifies how the two exceptions to the Expansion Clawback interact. Section 4652(a)(6)(C)(ii)(I) exempts "existing facilities or equipment of a covered entity for manufacturing semiconductors" and § 4652(a)(6)(C)(ii)(II) exempts "significant transactions involving the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors [] and predominantly serves the market of a foreign county of concern." Thus, subclause (I) provides a categorical exception for existing facilities while subclause (II) provides an exception regardless of whether the facility is existing or new, provided that it produces legacy semiconductors and predominantly serves the market of a foreign country of concern. Under this structure, the categorical exception in subclause (I) would not be available when the facility is no longer an "existing facility" due to significant renovations, but a covered entity could still avail itself of the exception provided by subclause

(II). Without the concept of significant renovations, covered entities could evade the expansion prohibition simply by significantly expanding an existing facility rather than constructing a new facility.

CPO also believes that limiting capacity expansion for existing legacy facilities to ten percent is appropriate and upholds the national security goals of the Act. The final rule permits a five percent increase in semiconductor manufacturing capacity for ordinary course of business investments and facility improvements for all existing facilities. A larger exemption would undermine the national security goals of the Act by permitting the construction of additional legacy semiconductor manufacturing capacity in foreign countries of concern, potentially allowing for technology transfer or investments that could potentially destabilize global semiconductor markets, thus undermining the ability of the United States to develop commercially viable semiconductor industries.

Comment #2: Commenters suggested revising the definition of "significant renovations" to limit it to new cleanroom construction or the addition of a manufacturing line that is not part of the legacy facility's designed capacity level. Alternatively, they suggest significant renovations could be defined as an increase in the square footage of an existing facility by a specified percentage.

Response: CPO agrees that "significant renovations" can be better defined by reference to new cleanroom construction or the addition of a manufacturing line. The final rule defines significant renovations as building new cleanroom space, adding a production line, or other physical space to an existing facility that, in the aggregate during the applicable term of the required agreement, increases semiconductor manufacturing capacity by 10 percent or more.

Comment #3: Some commenters suggested increasing the percentage threshold for capacity expansion upward from 10 percent to 15 percent or 25 percent, to maintain the Department's objectives of only allowing modestly expanded capacity, while ensuring that existing facilities can be reasonably maintained over the course of the 10-year period.

Response: CPO declines to raise the threshold for defining significant renovations beyond 10 percent. As explained above, greater expansion of legacy semiconductor manufacturing capacity in a foreign country of concern may lead to increased domestic dependencies and supply chain vulnerabilities, which could jeopardize national security.

Comment #4: Commenters suggested that the final rule allow for a waiver for expansion of legacy facilities on a case-by-case basis.

Response: As mentioned above in the discussion of the definition of "required agreement," the final rule permits modifications to the required agreement between a covered entity and the Secretary upon mutual consent. The definition of "existing facility" in this final rule has been modified slightly to reflect this capability.

231.123 Technology licensing.

Broadly speaking, the comments on the definition of technology licensing were similar to or combined with those on the definition of joint research; both types of activities are subject to the Technology Clawback provision. One commenter summarized concerns by noting that "the emphasis should be on agreements involving the transfer of critical technology or know-how and make it clear that customary business discussions that may include general technical information are outside the reach of the rule."

Comment #1: Numerous commenters emphasized the need to exempt patent-related activities from the definition of "technology licensing." They observed that by including patents alongside trade secrets and know-how, the proposed language made a wholesale change to the way American companies conduct patent licensing, patent litigation, standard essential patent licensing, and standards-setting activities in China. Patents are public documents and should not be considered alongside trade secrets and "know-how. They asserted that not excluding patents would impede ordinary business transactions that are essential to the semiconductor ecosystem and the protection and monetization of intellectual property. Commenters noted that patents are published documents, and therefore, the invention in a patent is already available and could be

known to foreign entities of concern. Commenters also recommended that the definition of "technology licensing" exclude the affiliate transfers of patent agreements; not doing so may restrict funding recipients from entering into intracompany intellectual property license and transfer agreements with their affiliates, or vice versa. This has potentially wide-reaching impact for companies that utilize the well-accepted corporate practice of holding and managing intellectual property in a single entity to enable their global research and development efforts.

Response: CPO agrees that patent licensing should not be subject to the Technology Clawback because patents are, by definition, already public documents. In the final rule, patents have been excluded from the scope of technology licensing.

Comment #2: Numerous comments stressed the need to allow for participation in international collaborative efforts such as standards organizations. Many entities that would meet the definition of foreign entity of concern are members of international standards setting organizations in the semiconductor space. Restricting which companies may participate in standards organizations puts U.S.-based standards development organizations at a disadvantage.

Response: CPO agrees and has addressed this issue in the discussion related to the definitions of "joint research" and "technology licensing."

Comment #3: Some commenters thought that general sales of products may be captured under the proposed technology licensing definition. They say that the prohibition on technology licensing "with a foreign entity of concern that relates to a technology or product that raises national security concerns," when combined with the definition of "technology licensing" could be interpreted to prohibit the sale of semiconductor products because each product is sold with an explicit or implied license to use the intellectual property underlying the product.

Response: CPO clarifies that the prohibition on technology licensing is not intended to apply to sales of semiconductor products. The final rule includes an exception to the definition of technology licensing for intellectual property licenses relating to the use of a product that is sold by a covered entity or a related entity.

Comment # 4: Commenters noted that some companies outsource fabrication and/or packaging operations to foundries and outsourced semiconductor and test companies (OSATs), and in doing so they may make available intellectual property (such as a design file) to manufacturing partners. The commenter believes, based on the proposed rule, such activities could be construed as transferring know-how to a foreign entity of concern. They request that the rule be clarified to specify that information, such as design files for fabrication and packaging as part of an outsourced manufacturing agreement, is not covered by the Technology Clawback.

Response: CPO clarifies that the Technology Clawback is not meant to prevent the outsourcing of manufacturing or packaging of semiconductors, and the final rule allows for an exception in the "technology licensing" definition.

Comment #5: Some commenters thought that the proposed technology licensing definition could restrict funding recipients from entering into intracompany intellectual property license and transfer agreements with their affiliates. They noted that "this has potentially wide-reaching impact for companies that utilize the well-accepted corporate practice of holding and managing intellectual property in a single entity to enable their global R&D efforts."

Response: CPO agrees that the technology licensing definition should not capture transactions conducted exclusively between employees of a covered entity or among entities that are related entities of the covered entity. The definition in the final rule has been modified to include this exception.

B. Comments related to Subpart B – General

231.202 Prohibition on certain expansion transactions

Comment #1: One commenter noted that the period subject to this prohibition (a ten-year period beginning with the date of the incentive award) and the analogous prohibition in Treasury's Advanced Manufacturing Investment Tax Credit rule (ten years from when eligible property is placed into service) can differ and may result in the combined restrictive period lasting longer than ten years; they suggest that the terms be harmonized to the ten year period of

the award.

Response: CPO declines to make this change. The applicable term of the Expansion Clawback is articulated in the Act.

Comment #2: Several commenters noted that the definition of "affiliate" in the proposed rule differed from the definition of "affiliated group" included in the Expansion Clawback, resulting in a different threshold percentage for affiliates based on voting interest (50 percent in the proposed rule versus 80 percent in the Expansion Clawback).

Response: As noted above, CPO has removed the definition of "affiliate" from the proposed rule. However, CPO remains focused on ensuring that beneficiaries of CHIPS funds do not act in a manner that would be contrary to the national security goals of the Act. The Expansion Clawback in the Act refers to the term "affiliated group," as is defined in 26 U.S.C. 1504, which generally establishes an 80 percent ownership of stock or voting power threshold. The Act further provides that if any member of a covered entity's affiliated group engages in an impermissible significant transaction that results in the material expansion of semiconductor capacity, the Secretary may require an appropriate mitigation agreement or recoup the full amount of the Federal financial assistance award. CPO believes that applying the Expansion Clawback to members of a covered entity's affiliated group, would adequately avoid circumvention of the Clawback and meet the national security goals of the Act.

CPO, notes, however, that entities related to a covered entity but outside the scope of the affiliated group, as defined in the Act, may nonetheless be relevant to application of the Expansion Clawback. First, transactions between the covered entity and the related entities remain subject to the Expansion Clawback. Second, under applicable legal principles, such as the law of agency or single enterprise liability, the actions of such a related entity may be imputed to the covered entity or a member of its affiliated group for purposes of determining whether the covered entity or its affiliated group member engaged in a prohibited transaction.

231.203 Prohibition on certain joint research or technology licensing.

Comments: Several commenters indicated that the Technology Clawback should apply prospectively only. They argue this approach is consistent with the statutory language of the Act, which states that the Technology Clawback only becomes operative if national security concerns with specific joint research or a technology license are "communicated to the covered entity before engaging in such joint research or technology licensing." One commenter suggested that the rule should clarify that companies holding a U.S. export license would not be prohibited or disqualified from applying for or receiving CHIPS Act funding, and would not be subject to the Technology Clawback provision, for engaging in technology licensing transactions that would be otherwise permitted by the export license.

However, another commenter noted that while the prohibition should not be applied retroactively, "there may be attempts by funding recipients to escape CHIPS restrictions with quick new investments, claiming plans and activities that predate implementing regulations. The final rules should discourage this as sharply as possible. The same applies to any rush of late-appearing joint research."

Response: The final rule clarifies that the Technology Clawback does not apply to joint research and technology licensing activities with a foreign entity of concern related to technology or products that raise national security concerns that are ongoing prior to the Secretary communicating that such technology or products raise national security concerns. Through this final rule, the Secretary is communicating to all covered entities those technologies and products that raise national security concerns. To ensure that this safe harbor is not used to circumvent the prohibitions in the rule, covered entities will be required to document those grandfathered joint research and technology licensing activities in the required agreement, and only those activities will fall within the safe harbor. The safe harbor does not preclude the Secretary from requiring the cessation of joint research or technology licensing with a foreign entity of concern as a condition of receiving Federal financial assistance. Any such terms will be memorialized in the required agreement.

Comment #2: Several commenters believed that use of the term "relates to" in the prohibition of certain joint research or technology licensing in the proposed rule lacks clarity and should be defined. Another commenter suggested defining "relates to" as "required for development of production" (as defined in the Export Administration Regulations) of items that raise national security concerns.

Response: The term "relates to" is in the Act, and although CPO is not specifically defining it in the rule, a reasonable interpretation is any joint research or technology licensing that would require an export license or involves the items included on the list of semiconductors critical to national security.

Comment #3: Some commenters objected to the proposed rule's inclusion of a covered entity's affiliates within the scope of the Technology Clawback because the covered entity's affiliates are not mentioned in the Act's Technology Clawback provision. Some commenters noted that the Secretary was constrained from applying the Technology Clawback to affiliates because only the Expansion Clawback included reference to the affiliated group.

Response: As noted above, CPO has removed the term "affiliates" as a defined term in the final rule. This change clarifies that Technology Clawback as articulated in the proposed rule applies to the covered entity, and not to affiliates of the covered entity.

However, CPO remains concerned that the joint research and technology licensing conditions of the Technology Clawback could be circumvented by relatively commonplace corporate arrangements. If the Secretary could recoup funds only if the distinct legal entity that is a party to a CHIPS incentives award engaged in a prohibited joint research or licensing transaction, a corporation could capture the benefit of the CHIPS award by having a subsidiary receive the award, while it engages in prohibited joint research or licensing itself or through another subsidiary. That concern is particularly acute because, as some commenters highlighted, complex corporate structures and intracompany licensing arrangements are common in the semiconductor industry. Thus CPO believes that merely restricting the activities of the covered

entity is not sufficient to prevent, for example, a parent company—which could be the ultimate beneficiary of the CHIPS Act funds—from engaging in joint research and technology licensing that would be prohibited under the Technology Clawback.

At the same time, CPO is cognizant of the complex corporate relationships and ongoing business activities of the semiconductor industry. CPO is also mindful that a number of commenters requested flexibility in the application of the Technology Clawback, such as the ability to enter into mitigation agreements or other mitigation measures that would stop short of recouping the entire Federal financial award. The Act, however, directs that where a covered entity engages in prohibited joint research or technology licensing activity such that the Technology Clawback is triggered, the Secretary "shall recover the full amount of an award."

To address the risk of circumvention while accommodating further flexibility, CPO is clarifying in the final rule that it may impose additional conditions in the funding agreement that are in addition to the Technology Clawback. The final rule provides that if any entity related to the covered entity engages in joint research or technology licensing that would violate the Technology Clawback if engaged in by the covered entity, the Secretary may take appropriate remedial measures, including requiring mitigation agreements or recovering up to the full amount of the Federal financial assistance provided to a covered entity. The Secretary has discretion to impose lesser remedial measures, as appropriate. For purposes of this final rule, a related entity is any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the covered entity. This approach is necessary to prevent enterprises from circumventing the conditions that Congress required to avoid semiconductor technology transfer to foreign entities of concern.

CPO notes that the Secretary will impose further requirements, as appropriate, in the individual funding agreements, including additional conditions on certain joint research or technology licensing, to ensure that the prohibitions in the Act are achieved. This is consistent with the Act, which authorizes the Secretary to enter into agreements under the statute "on such

terms as the Secretary considers appropriate."

231.204 Retention of records.

Comment: Public comments noted that the proposed rule's record retention requirements for all "significant transactions" is overly broad and burdensome, due in part to the $100,000 threshold for "significant transactions." Most comments suggest a revision to limit record retention to transactions involving the "material expansion" of semiconductor manufacturing capacity in a foreign country of concern, instead of all transactions.

Response: CPO agrees that the records retention requirement should only apply to transactions that involve the material expansion of semiconductor manufacturing capacity in a foreign country of concern, and has modified the record retention requirement accordingly in the final rule.

C. Comments related to Subpart C – Notification, Review, and Recovery

231.304 Initiation of review.

Comment: One commenter suggested that there be a 10-day time limit for the Secretary to review a notification for completeness and to request additional information from the covered entity.

Response: CPO declines to make this change. The amount of material produced in response to a notification may be substantial. The Secretary may need more than 10 days to adequately review it for completeness. To provide additional clarity and to reduce uncertainty, CPO has included additional details in the final rule about the process for initiating, conducting, and completing a review under the Expansion Clawback. The final rule now more clearly sets out the process by which the covered entity must notify the Secretary of a potentially prohibited activity, the Secretary's ability to request additional information to complete a review of a potentially prohibited activity, the Secretary's timeline for issuing an initial determination, the covered entity's ability and timeline to seek reconsideration of the initial determination, and the Secretary's timeline for making a final determination. The final rule clarifies that the Secretary

can initiate a review based upon any information available to the Secretary, without first needing to be notified by the covered entity.

231.307 Review of actions that may violate the prohibition on certain joint research or technology licensing.

Comment: One commenter suggested that there be a mitigation process for possible violations of the prohibition on joint research technology licensing that would allow for the Secretary to take measures to mitigate the risk to national security, comparable to the mitigation process for violations of the material expansion prohibition.

Response: CPO declines to develop a mitigation process for violations of the prohibition on joint research and technology licensing, as the Act compels the Secretary to recover the full amount of the Federal financial assistance if the Technology Clawback is triggered. However, the final rule contemplates additional conditions that will be imposed, as appropriate, on the covered entity, as well as related entities, to avoid circumvention of the Technology Clawback. The final rule provides that the Secretary has discretion to adopt appropriate measures in response to violations of the additional conditions, which could include a mitigation agreement, recovery of some of the Federal financial award or recovery of the entire Federal financial award.

D. Other Comments

In addition to comments that addressed specific definitions and provisions in the proposed rule, some comments were submitted that relate to broader issues, such as enforcement of the rule and its relationship to the Treasury Department's rule authorizing the Advanced Manufacturing Investment Tax Credit, which includes a similar prohibition on significant transactions involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern for those entities claiming the credit.

Comment #1: Commerce and Treasury should work together closely to create rules and processes for Expansion Clawback and Recapture that apply the same definitions, criteria, review process, and enforcement protocol.

Response: Commerce and Treasury worked closely together and harmonized definitions to the maximum extent possible and will continue to do so after the final rules take effect.

Comment #2: Commerce and Treasury should create one, jointly staffed, fully empowered interagency tribunal to review and redress potentially improper uses of CHIPS Act benefits as this would be an extremely efficient and consistent way to ensure compliance. This mechanism would conserve the resources of both agencies, would ensure consistency of statutory application, and would provide greater predictability for the affected companies.

Response: CPO will take this comment into consideration as it develops mechanisms to enforce compliance and redress improper use of CHIPS Act benefits.

Comment #3: Commerce and Treasury should recognize differences between the statutory provisions governing the Funding Program and the Investment Tax Credit. The regulatory scheme implementing the different provisions of the Act should allow for differences between the Legacy Exception and the Investment Tax Credit Legacy Exception in light of the differences in the statutory provisions for each program.

Response: CPO recognizes that there are differences in statutory requirements for the Advanced Manufacturing Investment Credit and the semiconductor incentives program, and that any implementing rules and guidance will reflect those differences. While the two regimes are aligned, there may be differences in how specific objectives are pursued.

Changes from the Proposed Rule

Sections have been renumbered throughout to reflect modifications to the proposed rule.

Changes in Subpart A (Definitions)

The final rule does not include the term "Affiliate," which appeared in proposed §

231.101.

The final rule does not include the term "Applicable Term," which appeared in proposed § 231.102.

In § 231.101 of the final rule, the definition of "Existing Facility" has been changed to specify that only facilities built, equipped, and operating prior to entering into the required agreement will be considered existing facilities; at the discretion of the Secretary, a facility that is undergoing construction, expansion, or modernization at the time of entering into the required agreement may be memorialized in the required agreement at the semiconductor manufacturing capacity for which it is designed or any lower capacity.

In § 231.102 of the final rule, minor modifications were made to the definition of "Foreign Country of Concern."

In § 231.103 of the final rule, minor modifications were made to the definition of "Foreign Entity."

In § 231.104 of the final rule, the definition of "Foreign Entity of Concern" was modified; the prior definition of "owned by, controlled by, or subject to the jurisdiction or direction" was modified and directly incorporated into the definition of foreign entity of concern. In addition, proposed § 231.106(g) is deleted because, after further evaluation, CPO was concerned that there may be bases by which the Federal Communications Commission may (or can be compelled) to add entities to the list of equipment and services required by the Secure and Trusted Communications Networks Act of 2019, not all of which may align with the national security goals of the Act. Minor technical corrections were also made.

The final rule does not include the term "Funding Recipient," which appeared in proposed § 231.107. The term was omitted to better reflect the Act's use of the term covered entity.

In § 231.105 of the final rule, the term "Joint Research" was modified to clarify that the following types of activities are not considered joint research: standards-related activities;

research and development conducted exclusively between employees of a covered entity or between entities that are related entities of the covered entity; research, development, or engineering related to a manufacturing process for an existing product solely to enable use of foundry, assembly, test, or packaging services for integrated circuits; research, development, or engineering involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities; and warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity. Research and development is also defined separately in the final rule.

In § 231.110 of the final rule, the definition of "Legacy Semiconductor" was modified to include additional categories. For the purposes of a semiconductor wafer facility, the definition includes a silicon wafer measuring 8 inches (or 200 millimeters) or smaller in diameter and a compound wafer measuring 6 inches (or 150 millimeters) or smaller in diameter. For the purposes of a semiconductor fabrication facility, the definition includes a digital or analog logic semiconductor that is of the 28-nanometer generation or older (i.e., has a gate length of 28 nanometers or more for a planar transistor); a memory semiconductor with a half-pitch greater than 18 nanometers for Dynamic Random Access Memory (DRAM) or less than 128 layers for Not AND (NAND) flash that does not utilize emerging memory technologies, such as transition metal oxides, phase-change memory, perovskites, or ferromagnetics relevant to advanced memory fabrication; and a semiconductor identified by the Secretary in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii). For the purposes of a semiconductor packaging facility, the definition includes a semiconductor that does not utilize advanced three-dimensional (3D) integration packaging. The definition in the final rule excludes semiconductors critical to national security, as defined in § 231.118; a semiconductor with a post-planar transistor architecture (such as fin-shaped field-effect transistor (FinFET) or gate all around field-effect transistor); and a semiconductor utilizing advanced three-dimensional (3D) integration

packaging, such as by directly attaching one or more die or wafer, through silicon vias, through mold vias, or other advanced methods.

In § 231.108 in the final rule, minor modifications were made to the definition of "Material Expansion."

In § 231.109 of the final rule, the definition of "Members of the Affiliated Group" is added.

The final rule does not separately define "Owned by, controlled by, or subject to the jurisdiction or direction of," which was in proposed § 231.112. In the final rule, the definition has been directly incorporated into the definition of foreign entity of concern, and now clarifies that it applies to persons who are citizens, nationals, or residents of a foreign country listed in 10 U.S.C. 4872(d) and who are located in a foreign country listed in 10 U.S.C. 4872(d). It has also been modified to include as a foreign entity of concern, any person whose outstanding voting interest is at least 25 percent held directly or indirectly by persons that fall within subsection (i)-(iii) of the definition. This change was to ensure that foreign entities of concern could not circumvent the ownership threshold by coordinating with other foreign entities of concern to each have less than the 25 percent threshold.

In § 231.112 of the final rule, the definition of "Required Agreement" was modified to require that it memorialize the covered entity's existing facilities in foreign countries of concern and the covered entity's existing joint research and technology licensing activities related to technology or products that raise national security issues with foreign entities of concern; that it include additional terms to mitigate national security risks, including as contemplated in § 231.204; and that the agreement may be amended by mutual consent to address changes in the status or ownership of an existing facility or any other circumstances that may arise.

In § 231.113 of the final rule, a definition of "Research and Development" is added. To ensure appropriate scope, the definition is more general than how the term was used in the proposed definition of joint research.

In § 231.116 of the final rule, the definition of "Semiconductor Manufacturing" is clarified to specify that it includes semiconductor wafer production, including the processes of wafer slicing, polishing, cleaning, epitaxial deposition, and metrology.

In § 231.117 of the final rule, the definition of "Semiconductor Manufacturing Capacity" is modified to address wafer production facilities, includes a capacity metric for semiconductor fabrication facility for wafers designed for wafer-to-wafer bonding structure, and is now measured on a yearly basis.

In § 231.118 of the final rule, the definition of "Semiconductors Critical to National Security" is modified to make a minor change to the description of FD-SOI semiconductors. The definition was also changed to clarify that the Secretary can designate additional categories of semiconductors critical to national security.

In the final rule, the term "Significant transaction," which was proposed § 231.121 has been removed.

In § 231.119 of the final rule, the definition of "Significant Renovations" has been modified to emphasize that it is tied to the building of new cleanroom space or adding a production line or other physical space to an existing facility.

In § 231.120 of the final rule, the definition of "Technology Licensing" has been modified to clarify that it means an express or implied contractual agreement in which the rights owned by, licensed to or otherwise lawfully available to one party in any trade secrets or knowhow are sold, licensed or otherwise made available to another party. The definition also excludes licensing of patents, including licenses related to standard essential patents or cross licensing activities; licensing or transfer agreements conducted exclusively between a covered entity and related entities, or between or among entities that are related entities to the covered entity; removes reference to patents; standards-related activity (as such term is defined in 15 CFR Part 772); agreements that grant patent rights only with respect to "published information" and no proprietary information is shared; implied or general intellectual property licenses

relating to the use of a product that is sold by a covered entity or related entities; technology licensing related to a manufacturing process for an existing product solely to enable use of assembly, test, or packaging services for integrated circuits; technology licensing involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities; warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity; and disclosures of technical information to a customer solely for the design of integrated circuits to be manufactured by the funding recipient for that customer.

In § 231.121 of the final rule, the definition of "Technology or Product That Raises National Security Concerns" is modified to clarify that the Secretary can designate additional technologies or products that raise national security concerns. Minor technical corrections were also made.

Changes in Subpart B – General

In § 231.201 of the final rule, minor modifications were made to reflect changes to other parts of subpart B.

In § 231.202 of the final rule, the prohibition on certain expansion transactions was modified to conform with changes to definitions in the final rule, and to make other minor changes.

In § 231.203 of the final rule, the prohibition on certain joint research or technology licensing was modified to clarify that it only applies to the covered entity, and that the prohibition does not apply to joint research or technology licensing activities that relate to products or technology that raise national security concerns that were ongoing prior to the Secretary determining such products or technology raised national security concerns. It also requires that such joint research or licensing arrangements be memorialized in the required agreement.

In § 231.204 of the final rule, a new provision is added: "Additional conditions on certain joint research or technology licensing." This new provision establishes that the Secretary is empowered to impose appropriate conditions on the covered entity to mitigate the risk of circumvention of the Technology Clawback. Such provisions would allow the Secretary to recover the entire Federal financial award or impose lesser consequences, such as requiring a mitigation agreement, if any related entity engages in joint research or technology licensing that would violate the Technology Clawback if engaged in by the covered entity. For purposes of this condition, a related entity is any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the covered entity.

§ 231.205 of the final rule, "Retention of Records," is modified to clarify that the retention of records requirement applies to records related to significant transactions involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, as well any records that relate to a transaction that is being reviewed by the Secretary that are maintained by the covered entity, a member of the affiliated group of the covered entity or by a related entity.

Changes in Subpart C – Notification, Review, and Recovery

In § 231.301 Procedures for notifying the Secretary of significant transactions: was modified to clarify that notification period aligns with the 10-year term of the Expansion Clawback. Minor technical corrections were also made.

In § 231.302 Contents of notifications; certifications: minor technical corrections were made.

In § 231.303 Response to notifications: changes were made to clarify that the Secretary can request additional information if a notice is deficient.

In § 231.304 Initiation of review: significant changes were made to clarify the process, standards, and timing of initiating a review.

In § 231.305 Procedures for review: significant changes were made to clarify the process, standards, and timing of a review, including the ability of a covered entity to seek reconsideration of an initial determination.

In § 231.306 Mitigation of national security risks: changes were made to clarify that the Secretary has discretion to waive the recovery of funds for violation of § 231.302 in circumstances where an appropriate mitigation agreement has been entered into and complied with by the covered entity.

In § 231.307 Review of actions that may violate the prohibition on certain joint research or technology licensing: the section was revised substantially to clarify the process, standards, and timing for the Secretary's review of possible violations of the prohibitions on certain joint research or technology licensing.

In § 231.308 Recovery and other remedies: minor technical corrections were made**.**

Changes in Subpart D – Other Provisions

In § 231.401 Amendment: minor technical corrections were made.

In § 231.402 Submission of false information: minor technical changes are made.

A new section, § 231.403, was added to include a severability clause.

Classification

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is significant as defined by Section 3(f)(1) for purposes of Executive Order 12866. A detailed regulatory impact assessment was published in the proposed rule and is not repeated in its entirety here. No

public comments were received regarding the impact assessment, substantive portions of which are included below.

This rule limits the ability of covered entities to invest in new semiconductor manufacturing capacity in foreign countries of concern. This limitation is intended to ensure that federal funding is used consistent with the goals of the CHIPS Act to incentivize investment in semiconductor facilities and equipment in the United States. At this time, it is unknown how the investments in foreign countries of concern by those that are not covered entities will be affected.

Although the provisions in this rule prohibit covered entities from establishing most new manufacturing capacity in foreign countries of concern, covered entities with existing facilities in foreign countries of concern would be able to continue current operations. The rule also allows them to upgrade facilities and production lines at existing foreign facilities (in compliance with export controls) if overall production capacity is not increased. In addition, covered entities could modestly expand capacity at existing facilities producing mature (legacy) technology. Finally, this rule allows covered entities to make new investments in manufacturing capacity in foreign countries of concerns in the limited circumstance in which such production of legacy-level semiconductors would "predominately serve the market of the foreign country of concern." These provisions ensure minimal disruptions to revenues, for the foreseeable future, to firms that currently have productive capacity in foreign countries of concern. It is estimated that less than ten firms may be impacted.[1]

This regulatory impact analysis does not consider the private costs to covered entities of limiting their investments in foreign countries of concern. In pursuing program funding, applicants are expected to weigh the private costs and benefits of the conditions for funding outlined by the provisions in this proposed rule. CHIPS Incentives Program funding is intended

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[1] SEMI, *World Fab Forecast* (2022). These firms refer to those with productive capacity in countries of concern, are headquartered outside of countries of concern.

to complement, not replace, private investment and other sources of funding. Using $39 billion in financial assistance, the CHIPS Incentives Program is designed to restore U.S. leadership in semiconductor manufacturing and innovation. Through the first funding opportunity, released February 28, 2023, the CHIPS Incentives Program aims to (1) to build at least two new large-scale cluster of leading-edge logic fabs, (2) to be home to multiple high-volume advanced packaging facilities, (3) to produce high-volume leading-edge dynamic random-access memory (DRAM) chips on economically competitive terms, and (4) to increase its production capacity for the current-generation and mature node chips that are most vital to U.S. economic and national security. To achieve these aims, the CHIPS Incentives Program funding awards are designed to catalyze private investment in the United States.

By restricting the ability of covered entities to invest in new semiconductor manufacturing capacity in foreign countries of concern, the proposed rule would also likely catalyze investment outside foreign countries of concern.

In particular, the demand for leading-edge, current, and mature semiconductors are estimated to increase significantly in the next decade, from approximately $600 billion per year in 2022 to approximately $1 trillion revenue per year within the next 10 years.[2] An increase in global productive capacity for a wide variety of semiconductors will be needed to supply the increased chip demand. The restriction on expanding manufacturing capacity in foreign countries of concern is likely to increase the need for additional capacity to be built outside foreign countries of concern.

Anticipated Transfers of Funds

Where the conditions in this final rule are violated, covered entities face the potential

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[2] Gartner, *Semiconductor Revenue Forecast* (January 2023); McKinsey & Company, *The Semiconductor Decade: A Trillion-Dollar Industry* (April 2022), available at https://www.mckinsey.com/industries/semiconductors/our-insights/the-semiconductor-decade-a-trillion-dollar-industry.

"clawback" of federal funding. For purposes of this analysis, the recovery of federal funding is considered to be a transfer of funds and could be of an equal amount of the funding award (plus interest) back to the government. This recovery of funds could have negative implications for the award recipients' financial condition and, for public companies, could affect their stock valuation. The recovery of funds might also affect award recipients' willingness or ability to continue constructing semiconductor facilities and equipment in the United States.

The potential clawback of funds is intended to serve as a significant deterrent to violating the conditions of an award. The Department, therefore, expects that few, if any, covered entities will violate the prohibitions laid out in this proposed rule. Damage to corporate reputation resulting from violating an agreement with the U.S. government, while not readily quantifiable, would also be a significant deterrent to violations. Thus, the likelihood of violations that result in a recovery of funding is small and the impact of the transfer is expected to be minimal across all incentives program participants. Furthermore, even in the unlikely event that a violation occurs and clawbacks become necessary, the impacted chipmakers are highly unlikely to abandon their finished or ongoing investments in the United States.

Two reasons make this outcome unlikely: First, because of the high fixed costs associated with chip production, companies are likely to either continue producing in facilities that are already built or finish building ongoing investment projects. Second, semiconductor production capacity is only likely to be built with a high degree of confidence of customer demand, usually with advanced purchases of wafer capacity prior to completion of the facility construction. Abandoning a finished or ongoing project could jeopardize customer relationships and ongoing revenue. The incentives associated with CHIPS are expected to incentivize applicants to locate their productive capacity within the United States. Once those decisions are made, and projects are underway, there would likely be significant costs to reverse such decisions.

Anticipated Reporting and Recordkeeping Costs

This rule establishes a notification requirement for covered entities that are planning

certain transactions in foreign countries of concern. This notification requirement applies to recipients pursuing transactions that would: (1) expand existing capacity for manufacture of legacy semiconductors; or (2) provide new capacity for legacy semiconductors that primarily serve the market of the foreign country of concern.

The Department estimates that there are not more than a handful of potential CHIPS Incentives Program applicants with existing facilities in foreign countries of concern that may seek to expand manufacturing capacity under the provisions of this rule, and therefore expects few notifications. However, for purposes of this analysis, the Department has conservatively assumed a maximum of 10 notifications per year. The notifications would require general information about planned transaction, such as the names, location and ownership of the parties involved; information about the manufacturing facility such as current and proposed semiconductor production technology to determine if it meets the "legacy" requirement; current and proposed manufacturing capacity to determine if the "existing facility" definition is met; and information about the markets or end users for the semiconductors to be manufactured in the case of new capacity. Because the covered entities would have initiated and planned these transactions, the basic information required in the notification would be known and readily available, and the notification process itself is not expected to be burdensome. The Department estimates that it would take recipients two hours to provide each notification, or a total of 20 hours per year for all recipients.

Anticipated Administrative (Government) Costs

Once received, notifications will be evaluated by the Department as to whether the transactions meet one of the permissible criteria. This analysis will be performed by Department staff, including an anticipated initial review and, if necessary, consultation with industry and technology experts, as well as with the funding recipient. As the number of notifications that will be submitted each year is expected to be small, the staffing requirements for review and analysis of the notifications is also expected to be small. Assuming conservatively 10 notifications per

year, two senior analysts and two licensing officers/electronics engineers could handle notifications with a fraction of their annual time. The total estimated cost would be approximately $110,000 per year (10 notifications * 4 staff at a GS-14 salary ($137/hr)[3] * 20 hours each to review for each notification).

The federal government may also incur costs for monitoring and enforcement efforts. Because the program is designed to deter violations, we expect that enforcement actions will rarely be needed. In those cases where the federal government will ultimately need to take enforcement action, the government will incur additional costs; however, the extent of those costs is currently unknown. Moreover, investments in semiconductor manufacturing are widely monitored and reported in the trade press. New or expanded semiconductor manufacturing capacity requires installation of expensive capital equipment and several years to bring into operation. It is unlikely that such expansions would go unnoticed. Therefore, to the extent that monitoring is required, we would expect that the government would incur limited costs.

Anticipated Benefits

The provisions in this proposed rule reinforce the benefits of the CHIPS Incentives Program by ensuring that funding goes toward increasing domestic manufacturing capacity and by discouraging investments in foreign countries of concern that would raise national security concerns. The domestic investments will advance U.S. economic and national security, enhance global supply chain resilience, and promote U.S. leadership in designing and building important semiconductor technologies. In particular, these investments will help address areas where the United States has fallen behind in semiconductor manufacturing. For example, although the United States remains a global leader in chip design and research and development, it has fallen behind in manufacturing and today accounts for only roughly 10 percent of commercial global

[3] This value takes the 2022 hourly wage rate $68.55 for GS-14 step 5 employees in the Washington, DC region and multiplies by two to account for overhead and benefits. Wage information is available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB.pdf

production.[4]

The CHIPS Incentives Program is expected to catalyze long-term economically sustainable growth in the domestic semiconductor industry in support of U.S. economic and national security. The Program is also expected to facilitate private investments in large-scale U.S.-based production and research and development, as well as throughout the supply chain, attracting both existing and new private investors to the U.S. semiconductor ecosystem and encouraging innovative approaches to funding industry growth. These are investments in facilities and equipment in the United States that would not occur otherwise.

The $39 billion of federal funding is intended to serve as a catalyst to galvanize private, state, and local investment in the semiconductor industry. It is expected that this funding will lay the groundwork for long-term growth and economic sustainability in the domestic semiconductor industry and promote the secure and resilient supply chains on which the sector relies. The industry, it is anticipated, will then produce, at scale, leading-edge logic and memory chips critical to the national security and U.S. economic competitiveness. The funding is further expected to support current-generation and mature-node technologies essential for economic and national security. The funding is also expected to lead to development of a robust and skilled workforce and a diverse base of suppliers for semiconductor production. The funding will support research and development that is expected to drive innovation in design, materials, and processes that will accelerate the industries of the future. Further, it is anticipated that the funding will support the broader U.S. economy, creating good jobs accessible to all, and supporting and growing local economies and communities.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief

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[4] The White House, "Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017," June 2021, 9, https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.

Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification, and NIST has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required, and none was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid OMB Control Number.

The proposed rule published on March 23, 2023 (88 FR 17439) discussed new requirements subject to the Paperwork Reduction Act. With this rule, NIST is establishing a notification requirement for covered entities planning to engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern that may be permitted if certain conditions are met. In the proposed rule, NIST estimated the burden to the public for this notification will average 20 hours (10 respondents * 2 hours per response), including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information with an estimated total cost is $110,000. No comments were received regarding this this information collection with the proposed rule.

With the publication of the final rule, NIST will be submitting a request to OMB for new OMB control number 0693-0096, Information Required from CHIPS Act Covered Entities Regarding Proposed Expansions of Semiconductor Manufacturing Capacity in Foreign Countries of Concern. The public may access this NIST request, including all supporting materials, at www.reginfo.gov/public/do/PRAMain and inserting the proposed OMB control

number or the name of the collection.

List of Subjects in 15 CFR Part 231

Business and Industry, Computer Technology, Exports, Foreign Trade, Grant Programs, Investments (U.S. Investments Abroad), National Defense, Government Contracts, Research, Science & Technology, and Semiconductor Chip Products.

Under the authority of 15 U.S.C. 4651, et seq, the National Institute of Standards and Technology adds part 231, subchapter C, to 15 CFR chapter II to read as follows:

Subchapter C – CHIPS Program

PART 231 – CLAWBACKS OF CHIPS FUNDING

Sec.

Authority: 15 U.S.C. 4651, *et seq.*

PART 231 – CLAWBACKS OF CHIPS FUNDING

Subpart A – Definitions

§ 231.101 Existing facility.

Existing facility means:

(a) Any facility, the current status of which, including its semiconductor manufacturing capacity, is memorialized in the required agreement entered into by the covered entity and the Secretary pursuant to 15 U.S.C. 4652(a)(6)(C) and based on the Secretary's assessments of historical capacity measurements. Only facilities built, equipped, and operating prior to entering into the required agreement are considered to be existing facilities. A facility that undergoes significant renovations not memorialized in the required agreement shall no longer qualify as an existing facility.

(b) Notwithstanding paragraph (a) of this section, in the case of a facility that is being equipped, expanded, or modernized at the time of entering into the required agreement, the Secretary may, at their discretion, memorialize the planned semiconductor manufacturing capacity of that facility or any appropriate lower semiconductor manufacturing capacity in the required agreement and deem such facility an existing facility.

§ 231.102 Foreign country of concern.

The term *foreign country of concern* means:

(a) A country that is a covered nation (as defined in 10 U.S.C. 4872(d)); and

(b) Any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

§ 231.103 Foreign entity.

Foreign entity, as used in this part:

(a) Means—

(1) A government of a foreign country or a foreign political party;

(2) A natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 8 U.S.C. 1324b(a)(3)); or

(3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(b) Includes—

(1) Any person owned by, controlled by, or subject to the jurisdiction or direction of an entity listed in paragraph (a) of this section;

(2) Any person, wherever located, who acts as an agent, representative, or employee of an entity listed in paragraph (a) of this section;

(3) Any person who acts in any other capacity at the order, request, or under the direction or control of an entity listed in paragraph (a) of this section, or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by an entity listed in paragraph (a) of this section;

(4) Any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise, owns 25 percent or more of the equity interests of an entity listed in paragraph (a) of this section;

(5) Any person with significant responsibility to control, manage, or direct an entity listed in paragraph (a) of this section;

(6) Any person, wherever located, who is a citizen or resident of a country controlled by an entity listed in paragraph (a) of this section; or

(7) Any corporation, partnership, association, or other organization organized under the laws of a country controlled by an entity listed in paragraph (a) of this section.

§ 231.104 Foreign entity of concern.

Foreign entity of concern means any foreign entity that is—

(a) Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189;

(b) Included on the Department of Treasury's list of Specially Designated Nationals and Blocked Persons (SDN List), or for which one or more individuals or entities included on the SDN list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest;

(c) Owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in 10 U.S.C. 4872(d));

(1) A person is owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country listed in 10 U.S.C. 4872(d) where:

(i) The person is:

(A) a citizen, national, or resident of a foreign country listed in 10 U.S.C. 4872(d); and

(B) located in a foreign country listed in 10 U.S.C. 4872(d);

(ii) The person is organized under the laws of or has its principal place of business in a foreign country listed in 10 U.S.C. 4872(d);

(iii) 25 percent or more of the person's outstanding voting interest, board seats, or equity interest is held directly or indirectly by the government of a foreign country listed in 10 U.S.C. 4872(d); or

(iv) 25 percent or more of the person's outstanding voting interest, board seats, or equity interest is held directly or indirectly by any combination of the persons who fall within subsections (i)-(iii);

(d) Alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(1) The Espionage Act, 18 U.S.C. 792 *et seq.*;

(2) 18 U.S.C. 951;

(3) The Economic Espionage Act of 1996, 18 U.S.C. 1831 *et seq.*;

(4) The Arms Export Control Act, 22 U.S.C. 2751 *et seq.*;

(5) The Atomic Energy Act, 42 U.S.C. 2274, 2275, 2276, 2277, or 2284;

(6) The Export Control Reform Act of 2018, 50 U.S.C. 4801 *et seq.*;

(7) The International Economic Emergency Powers Act, 50 U.S.C. 1701 *et seq.*; or

(8) 18 U.S.C. 1030.

(e) Included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);

(f) Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC List), or for which one or more individuals or entities included on the NS-CMIC list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest; or

(g) Determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States under this chapter.

§ 231.105 Joint research.

(a) *Joint research* means any research and development activity that is jointly undertaken by two or more parties, including any research and development activities undertaken as part of a joint venture as defined at 15 U.S.C. 4301(a)(6).

(b) Notwithstanding paragraph (a) of this section, the following is not joint research:

(1) A standards-related activity (as such term is defined in 15 CFR Part 772);

(2) Research and development conducted exclusively between and among employees of a covered entity or between and among entities that are related entities to the covered entity;

(3) Research, development, or engineering related to a manufacturing process for an existing product solely to enable use of foundry, assembly, test, or packaging services for integrated circuits;

(4) Research, development, or engineering involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities; and

(5) Warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity.

§ 231.106 Knowingly.

Knowingly means acting with knowledge that a circumstance exists or is substantially certain to occur, or with an awareness of a high probability of its existence or future occurrence. Such awareness can be inferred from evidence of the conscious disregard of facts known to a person or of a person's willful avoidance of facts.

§ 231.107 Legacy semiconductor.

(a) *Legacy semiconductor* means:

(1) For the purposes of a semiconductor wafer facility:

(i) A silicon wafer measuring 8 inches (or 200 millimeters) or smaller in diameter; or

(ii) A compound wafer measuring 6 inches (or 150 millimeters) or smaller in diameter.

(2) For the purposes of a semiconductor fabrication facility:

(i) A digital or analog logic semiconductor that is of the 28-nanometer generation or older (i.e., has a gate length of 28 nanometers or more for a planar transistor);

(ii) A memory semiconductor with a half-pitch greater than 18 nanometers for Dynamic

Random Access Memory (DRAM) or less than 128 layers for Not AND (NAND) flash that does not utilize emerging memory technologies, such as transition metal oxides, phase-change memory, perovskites, or ferromagnetics relevant to advanced memory fabrication; or

(iii) A semiconductor identified by the Secretary in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii).

(3) For the purposes of a semiconductor packaging facility, a semiconductor that does not utilize advanced three-dimensional (3D) integration packaging, under paragraph (b)(3) of this section.

(b) Notwithstanding paragraph (a) of this section, the following are not legacy semiconductors:

(1) Semiconductors critical to national security, as defined in § 231.118;

(2) A semiconductor with a post-planar transistor architecture (such as fin-shaped field field-effect transistor (FinFET) or gate all around field-effect transistor); and

(3) A semiconductor utilizing advanced three-dimensional (3D) integration packaging, such as by directly attaching one or more die or wafer, through silicon vias, through mold vias, or other advanced methods.

§ 231.108 Material expansion.

Material expansion means the increase of the semiconductor manufacturing capacity of an existing facility by more than five percent of the capacity memorialized in the required agreement due to the addition of a cleanroom, production line or other physical space, or a series of such additions.

§ 231.109 Members of the affiliated group.

Members of the affiliated group includes any entity that is a member of the covered entity's "affiliated group," as that term is defined under 26 U.S.C 1504(a), without regard to 26 U.S.C. 1504(b)(3).

§ 231.110 Person.

The term *person* includes an individual, partnership, association, corporation, organization, or any other combination of individuals.

§ 231.111 Predominately serves the market.

Predominately serves the market means that at least 85 percent of the output of the semiconductor manufacturing facility (e.g., wafers, semiconductor devices, or packages) by value is incorporated into final products (i.e., not an intermediate product that is used as factor inputs for producing other goods) that are used or consumed in that market.

§ 231.112 Required agreement.

(a) *Required agreement* means the agreement that is entered into by a covered entity and the Secretary on or before the date on which the Secretary awards Federal financial assistance under 15 U.S.C. 4652. The required agreement shall include, *inter alia*, provisions describing the prohibitions on certain expansion transactions and on certain joint research or technology licensing.

(b) The required agreement shall memorialize:

(1) The covered entity's existing facilities in foreign countries of concern; and

(2) Any ongoing joint research or technology licensing activities with foreign entities of concern that relate to technology or products that raise national security concerns as identified by the Secretary.

(c) The required agreement may include additional terms to mitigate national security risks, including as contemplated in § 231.204.

(d) To the extent consistent with the requirements of 15 U.S.C. 4652 and these regulations, the Secretary and the covered entity may amend the required agreement by mutual consent.

§ 231.113 Research and development.

Research and development means theoretical analysis, exploration, or experimentation; or the extension of investigative findings and theories of a scientific or technical nature into practical

application, including the experimental production and testing of models, devices, equipment, materials, and processes.

§ 231.114 Secretary.

Secretary means the Secretary of Commerce or the Secretary's designees.

§ 231.115 Semiconductor.

Semiconductor means an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III-V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include but are not limited to analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

§ 231.116 Semiconductor manufacturing.

Semiconductor manufacturing means semiconductor wafer production, semiconductor fabrication or semiconductor packaging. Semiconductor wafer production includes the processes of wafer slicing, polishing, cleaning, epitaxial deposition, and metrology. Semiconductor fabrication includes the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes on a wafer of semiconductor material. Semiconductor packaging means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit.

§ 231.117 Semiconductor manufacturing capacity.

Semiconductor manufacturing capacity means the productive capacity of a facility for semiconductor manufacturing. In the case of a wafer production facility, semiconductor manufacturing capacity is measured in wafers per year. In the case of a semiconductor fabrication facility, semiconductor manufacturing capacity is measured in wafer starts per year. In the case of a semiconductor fabrication facility for wafers designed for wafer-to-wafer bonding structure, semiconductor manufacturing capacity is measured in stacked wafers per

year. In the case of a packaging facility, semiconductor manufacturing capacity is measured in packages per year.

§ 231.118 Semiconductors critical to national security.

Semiconductors critical to national security means:

(a) Semiconductors utilizing nanomaterials, including 1D and 2D carbon allotropes such as graphene and carbon nanotubes;

(b) Compound and wide- and ultra-wide bandgap semiconductors;

(c) Radiation-hardened by process (RHBP) semiconductors;

(d) Fully depleted silicon on insulator (FD-SOI) semiconductors, other than with regard to semiconductor packaging operations with respect to such semiconductors of a 28-nonometerer generation or older;

(e) Silicon photonic semiconductors;

(f) Semiconductors designed for quantum information systems;

(g) Semiconductors designed for operation in cryogenic environments (at or below 77 Kelvin); and

(h) Any other semiconductors that the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is critical to national security and issues a public notice of that determination.

§ 231.119 Significant renovations.

Significant renovations means building new cleanroom space or adding a production line or other physical space to an existing facility that, in the aggregate during the applicable term of the required agreement, increases semiconductor manufacturing capacity by 10 percent or more of the capacity memorialized in the required agreement.

231.120 Technology licensing.

Technology licensing means:

(a) An express or implied contractual agreement in which the rights owned by, licensed

to or otherwise lawfully available to one party in any trade secrets or knowhow are sold, licensed or otherwise made available to another party.

(b) Notwithstanding paragraph (a) of this section, the following is not technology licensing:

(1) Licensing of patents, including licenses related to standard essential patents or cross licensing activities;

(2) Licensing or transfer agreements conducted exclusively between a covered entity and related entities, or between or among related entities of the covered entity;

(3) A standards-related activity (as such term is defined in 15 CFR Part 772);

(4) Agreements that grant patent rights only with respect to "published information" and no proprietary information is shared;

(5) An implied or general intellectual property license relating to the use of a product that is sold by a covered entity or related entities;

(6) Technology licensing related to a manufacturing process for an existing product solely to enable use of assembly, test, or packaging services for integrated circuits;

(7) Technology licensing involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities;

(8) Warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity; and

(9) Disclosures of technical information to a customer solely for the design of integrated circuits to be manufactured by the funding recipient for that customer.

§ 231.121 Technology or product that raises national security concerns.

A technology or product that raises national security concerns means:

(a) Any semiconductor critical to national security;

(b) Any item listed in Category 3 of the Commerce Control List (supplement no. 1 to part

774 of the Export Administration Regulations, 15 CFR part 774) that is controlled for National Security ("NS") reasons, as described in 15 CFR 742.4, or Regional Stability ("RS") reasons, as described in 15 CFR 742.6; and

(c) Any other technology or product that the Secretary determines raises national security concerns.

Subpart B – General

§ 231.201 Scope.

This subpart sets forth the prohibitions to be implemented in the required agreements, as well as record retention requirements related to those prohibitions.

§ 231.202 Prohibition on certain expansion transactions. (Expansion Clawback)

(a) During the 10-year period beginning on the date of the award of Federal financial assistance under 15 U.S.C. 4652, the covered entity and members of the affiliated group may not engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern; provided that this prohibition will not apply to—

(1) Existing facilities or equipment of a covered entity or any member of the affiliated group for manufacturing legacy semiconductors; or

(2) Significant transactions involving material expansion of semiconductor manufacturing capacity that—

(i) Produces legacy semiconductors; and

(ii) Predominately serves the market of a foreign country of concern.

(b) No later than the date of the award of Federal financial assistance award under 15 U.S.C. 4652, the covered entity shall enter into a required agreement that contains this prohibition and otherwise implements the requirements of this part.

§ 231.203 Prohibition on certain joint research or technology licensing. (Technology Clawback)

(a) During the applicable term of a Federal financial assistance award under 15 U.S.C. 4652, a covered entity may not knowingly engage in any joint research or technology licensing with a foreign entity of concern that relates to a technology or product that raises national security concerns.

(b) Notwithstanding paragraph (a) of this section, this prohibition will not apply to joint research or technology licensing that relate to technology or products that raise national security concerns that were ongoing prior to the Secretary's determination that such technology or products raised national security concerns. Any such ongoing joint research or technology licensing shall be memorialized in the required agreement.

§ 231.204 Additional conditions on certain joint research or technology licensing.

(a) In addition to the conditions of the Technology Clawback (§ 231.203), the Secretary will specify, in the required agreement with the covered entity, any additional measures that covered entities must take to mitigate the risk of circumvention of the Technology Clawback, including measures that will allow the Secretary to recover up to the full amount of the Federal financial assistance provided to the covered entity, if, during the term applicable to the award, any related entity engages in joint research or technology licensing that would violate the Technology Clawback if engaged in by the covered entity.

(b) For purposes of this rule, a related entity is any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the covered entity.

§ 231.205 Retention of records.

(a) During the 10-year period beginning on the date of the Federal financial assistance award under 15 U.S.C. 4652 and for a period of seven years following any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, a covered entity or member of the affiliated group planning or engaging in any such significant transaction involving the material expansion of semiconductor manufacturing

capacity in a foreign country of concern shall maintain records related to the significant transaction in a manner consistent with the recordkeeping practices used in their ordinary course of business for such transactions.

(b) A covered entity that is notified that a transaction is being reviewed by the Secretary shall immediately take steps to retain all records relating to such transaction, including if those records are maintained by a member of the affiliated group or by related entities.

Subpart C – Notification, Review, and Recovery

§ 231.301 Procedures for notifying the Secretary of significant transactions.

During the 10-year period beginning on the date of the Federal financial assistance award under 15 U.S.C. 4652, the covered entity shall submit a notification to the Secretary regarding any planned significant transactions of the covered entity or members of the affiliated group that may involve the material expansion of semiconductor manufacturing capacity in a foreign country of concern, regardless of whether the covered entity believes the transaction falls within an exception in 15 U.S.C. 4652(a)(6)(C)(ii). A notification must include the information set forth in § 231.302 and be submitted to notifications@chips.gov.

§ 231.302 Contents of notifications; certifications.

The notification required by § 231.301 shall be certified by the covered entity's chief executive officer, president, or equivalent corporate officer, and shall contain the following information about the parties and the transaction, which must be accurate and complete:

(a) The covered entity and any member of the affiliated group that is party to the transaction, including for each a primary point of contact, telephone number, and email address.

(b) The identity and location(s) of all other parties to the transaction.

(c) Information, including organizational chart(s), on the ownership structure of parties to the transactions.

(d) A description of any other significant foreign involvement, e.g., through financing, in the transaction.

(e) The name(s) and location(s) of any entity in a foreign country of concern where or at which semiconductor manufacturing capacity may be materially expanded by the transaction.

(f) A description of the transaction, including the specific types of semiconductors currently produced at the facility planned for expansion, the current production technology node (or equivalent information) and semiconductor manufacturing capacity, as well as the specific types of semiconductors planned for manufacture, the planned production technology node, and planned semiconductor manufacturing capacity.

(g) If the covered entity asserts that the transaction involves the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors that will predominately serve the market of a foreign country of concern, documentation as to where the final products incorporating the legacy semiconductors are to be used or consumed, including the percent of semiconductor manufacturing capacity or percent of sales revenue that will be accounted for by use or consumption of the final goods in the foreign country of concern.

(h) If applicable, an explanation of how the transaction meets the requirements, set forth in 15 U.S.C. 4652(a)(6)(C)(ii), for an exception to the prohibition on significant transactions that involve the material expansion of semiconductor manufacturing capacity, including details on the calculations for semiconductor manufacturing capacity and/or sales revenue by the market in which the final goods will be consumed.

§ 231.303 Response to notifications.

The Secretary will review the notification provided pursuant to § 231.301 for completeness, and may:

(a) Reject the notification, and, if so, inform the covered entity promptly in writing, if:

(1) The notification does not meet the requirements of § 231.302; or

(2) The notification contains apparently false or misleading information;

(b) Request additional information from the covered entity to complete the notification; or

(c) Accept the notification and initiate a review under § 231.304, and, if so, inform the covered entity promptly in writing.

§ 231.304 Initiation of review.

(a) The Secretary may initiate a review of a transaction:

(1) After accepting a notification pursuant to § 231.303(c); or

(2) Upon the Secretary's own initiative, where the Secretary believes that a transaction may be prohibited. In determining whether to initiate a review, the Secretary may consider all available information, including information submitted by persons other than the covered entity to notifications@chips.gov.

(b) Where the Secretary initiates review of a transaction under paragraph (a)(2) of this section, the Secretary will notify the covered entity promptly in writing.

(c) The Secretary will consult with the Secretary of Defense and the Director of National Intelligence upon the initiation of a review of any transaction.

§ 231.305 Procedures for review.

(a) During the review, the Secretary may request additional information from the covered entity. The covered entity shall promptly provide any additional information. The Secretary will determine whether the additional information is sufficient for the Secretary to complete the review, and may seek additional information from the covered entity if necessary. Where the Secretary has determined that the additional information is sufficient to allow the Secretary to complete the review, the Secretary will inform the covered entity in writing. The time periods for any determinations by the Secretary under this section will be tolled from the date on which the request for additional information is sent to the covered entity until the Secretary determines that the response is sufficient to complete the review.

(b) Not later than 90 days after a notification is accepted by the Secretary, or after the Secretary initiates a review under § 231.304(a)(2), and subject to any tolling pursuant to § paragraph (a) of this section, the Secretary will provide the covered entity an initial

determination in writing as to whether the transaction would violate § 231.202. The initial determination may include a finding that the covered entity or a member of the affiliated group has violated § 231.202.

(c) If the Secretary's initial determination is that the transaction would violate § 231.202 or that the covered entity or a member of the affiliated group has violated § 231.202 by engaging in a prohibited significant transaction, then:

(1) The covered entity may within 14 days of receipt of the initial determination request that the Secretary reevaluate the initial determination, including by submitting additional information.

(2) If the covered entity does not make such a request within 14 days of receipt of the initial determination, the initial determination will become final. If the covered entity recipient does request a reconsideration of the initial determination, the Secretary will issue the final determination within 60 days after the receipt by the Secretary of the request for reconsideration.

(3) Upon the issuance of a final determination that a transaction would violate § 231.202 or that the covered entity or a member of the affiliated group has violated § 231.202 by engaging in a prohibited significant transaction, the covered entity must cease or abandon the transaction (or, if applicable, ensure that the member of the affiliated group ceases or abandons the transaction), and the covered entity's chief executive officer, president, or equivalent corporate official, must provide a signed letter electronically to notifications@chips.gov within 45 days of the final determination certifying that the transaction has ceased or been abandoned. Such letter must certify, under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), that the information in the letter is accurate and complete.

(d) Unless recovery is waived pursuant to § 231.306, a violation of § 231.202 for engaging in a prohibited significant transaction or failing to cease or abandon a planned significant transaction that the Secretary has determined would be in violation of § 231.202 will result in the recovery of the full amount of the Federal financial assistance provided to the

covered entity, which amount will be a debt owed to the U.S. Government.

(e) The running of any deadline or time limitation for the Secretary will be suspended during a lapse in appropriations.

§ 231.306 Mitigation of national security risks.

If the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines that a covered entity or member of the affiliated group is planning to undertake or has undertaken a significant transaction that violates or would violate § 231.202, the Secretary may seek to take measures in connection with the transaction to mitigate the risk to national security. Such measures may include the negotiation of an amendment to the required agreement (a "mitigation agreement") with the covered entity to mitigate the risk to national security in connection with the transaction. The Secretary has discretion to waive, in whole or part, recovery of the Federal financial assistance provided to the covered entity for violation of § 231.305(d) in circumstances where an appropriate mitigation agreement has been entered into and complied with by the covered entity. If a covered entity fails to comply with the mitigation agreement or if other conditions in the mitigation agreement are violated, the Secretary may recover the full amount of the Federal financial assistance provided to the covered entity.

§ 231.307 Review of actions that may violate the prohibition on certain joint research or technology licensing.

(a) The Secretary may initiate a review of any joint research or technology licensing the Secretary believes may be prohibited by § 231.203. In determining whether to initiate a review, the Secretary may consider all available information, including information submitted by persons other than a covered entity to notifications@chips.gov.

(b) If the Secretary opens an initial review, the Secretary will notify the covered entity in writing and may request additional information from the covered entity. The covered entity shall provide the additional information to the Secretary within three business days, or within a longer

time frame if the covered entity requests in writing and the Secretary grants that request in writing.

(c) The Secretary may make an initial determination as to whether the covered entity violated § 231.203.

(d) If the Secretary's initial determination is that the covered entity did not violate § 231.203, the Secretary shall inform the covered entity in writing and close the review.

(e) If the Secretary's initial determination is that the covered entity violated § 231.203, the Secretary will provide that initial determination to the covered entity in writing.

(1) The covered entity may within 14 days of receipt of the initial determination request that the Secretary reevaluate the initial determination, including by submitting additional information.

(2) If the covered entity does not make such a request within 14 days of receipt of the initial determination, the initial determination will become final. If the covered entity does request a reconsideration of the initial determination, the Secretary will issue the final determination within 45 days of the initial determination.

If the Secretary makes a final determination that an action violated § 231.203, the Secretary will recover the full amount of the Federal financial assistance provided to the covered entity, which will be a debt owed to the U.S. Government.

§ 231.308 Recovery and other remedies.

(a) Interest on a debt under § 231.305 or § 231.307 will be calculated from the date on which the Secretary provides a final notification that an action violated § 231.202 or § 231.203.

(b) The Secretary may take action to collect a debt under § 231.305 or § 231.307 if such debt is not paid within the time prescribed by the Secretary in the required agreement or mitigation agreement. In addition or instead, the matter may be referred to the Department of Justice for appropriate action.

(c) If the Secretary makes an initial determination that § 231.202 or § 231.203 have been

violated, the Secretary may suspend Federal financial assistance.

(d) The recoveries and remedies available under this section are without prejudice to other available remedies, including remedies articulated in the required agreement or civil or criminal penalties.

Subpart D – Other Provisions

§ 231.401 Amendment.

Not later than August 9, 2024, and not less frequently than once every two years thereafter for the eight-year period after the last award of Federal financial assistance under 15 U.S.C. 4652 is made, the Secretary, after public notice and an opportunity for comment, if applicable and necessary, will issue a public notice identifying any additional semiconductors included in the meaning of the term "legacy semiconductor."

§ 231.402 Submission of false information.

Section 1001 of 18 U.S.C., as amended, shall apply to all information provided to the Secretary under 15 U.S.C. 4652 or under the regulations found in this part.

§ 231.403 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

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